

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	.	Criminal No. 1:11cr119
	.	
vs.	.	Alexandria, Virginia
	.	March 16, 2011
TERESA A. KELLY,	.	10:00 a.m.
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Defendant.	.	
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TRANSCRIPT OF PRE-INDICTMENT PLEA  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	CHARLES F. CONNOLLY, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and PATRICK F. STOKES, ESQ. ROBERT ZINK, ESQ. United States Department of Justice Criminal Division, Fraud Section 1400 New York Avenue, N.W. Washington, D.C. 20005
FOR THE DEFENDANT:	ROBERT A. LEVENTHAL, ESQ. Leventhal & Slaughter 111 North Orange Street, Suite 700 Orlando, FL 32801 and ALAN H. YAMAMOTO, ESQ. Law Office of Alan Yamamoto 634 South Washington Street Alexandria, VA 22314
OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 (Defendant present.)

3 THE CLERK: Criminal Case 11-119, United States of  
4 America v. Teresa A. Kelly. Would counsel please note their  
5 appearances for the record.

6 MR. ZINK: Your Honor, for the United States, Robert  
7 Zink from the Fraud Section, Patrick Stokes, and Charles Connolly.

8 THE COURT: Good morning.

9 MR. ZINK: Good morning.

10 MR. LEVENTHAL: Good morning, Your Honor.

11 MR. YAMAMOTO: Good morning. Alan Yamamoto and Robert  
12 Leventhal for Ms. Kelly.

13 THE COURT: All right. And I've just granted your  
14 motion to move Mr. Leventhal's admission pro hac vice.

15 MR. YAMAMOTO: Thank you, Your Honor.

16 THE COURT: All right?

17 Ms. Kelly, come up to the lectern. The clerk is going  
18 to issue an affirmation to you at this time.

19 TERESA ANN KELLY, DEFENDANT, AFFIRMED

20 THE COURT: All right, Ms. Kelly, you have now taken a  
21 promise to tell the truth in answering all of the Court's  
22 questions. If you should lie in answering any question, the  
23 government could prosecute you for a new and separate crime called  
24 perjury. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: For the record, what is your full name?

2 THE DEFENDANT: Teresa Ann Kelly.

3 THE COURT: And, Ms. Kelly, how old are you?

4 THE DEFENDANT: Thirty-five.

5 THE COURT: How much education have you completed?

6 THE DEFENDANT: A few years of college.

7 THE COURT: Do you have any problem reading, writing,  
8 understanding, or speaking English?

9 THE DEFENDANT: No.

10 THE COURT: Are you a United States citizen?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you presently on probation or parole  
13 from any other criminal matter?

14 THE DEFENDANT: No.

15 THE COURT: At this time, are you under the care of a  
16 doctor for any physical or mental condition?

17 THE DEFENDANT: No.

18 THE COURT: Within the last 24 hours, have you taken any  
19 medication, whether by prescription or over the counter?

20 THE DEFENDANT: No.

21 THE COURT: Are you at this time under the influence of  
22 any alcohol or drugs?

23 THE DEFENDANT: No.

24 THE COURT: All right, Ms. Kelly, we have several  
25 documents we need to review today in connection with your plea.

1 The first one has the title "Waiver of an Indictment." I see what  
2 appears to be your signature as well as that of your counsel on  
3 the document and today's date. Did you sign the waiver of  
4 indictment?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, before you signed the waiver, did you  
7 discuss it thoroughly with your counsel?

8 THE DEFENDANT: Yes.

9 THE COURT: And did they explain to you that under the  
10 laws and Constitution of the United States, you have a right to  
11 require the federal prosecutors to go before a group of people  
12 called a federal grand jury with the evidence the government has  
13 developed concerning your being involved in a conspiracy to commit  
14 various crimes against the United States? Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, a federal grand jury is made up of  
17 anywhere from 16 to 23 ordinary citizens, and they are brought to  
18 the court basically on a random basis, and what happens in the  
19 grand jury process is that a federal prosecutor goes into the  
20 grand jury room, and this is a secret proceeding, so that it's not  
21 open to the public, and the prosecutor presents evidence to the  
22 grand jury supporting the prosecutor's belief that a person may  
23 have violated certain federal criminal laws. The evidence can be  
24 the testimony of witnesses, it can be documents, whatever evidence  
25 the government feels it needs to present.

1           At the end of the presentation, if at least 12 members  
2 of that grand jury are satisfied that the evidence presented  
3 establishes probable cause to believe the person or persons have  
4 committed the crime or crimes the government wants to charge, then  
5 the grand jury issues a document called an indictment, and that is  
6 normally how a felony-level criminal prosecution begins in our  
7 court.

8           Do you understand that?

9           THE DEFENDANT: Yes.

10          THE COURT: Now, that grand jury review process is  
11 considered to be a way of protecting an individual's -- person's  
12 rights, because it exists to make sure that a federal prosecutor  
13 doesn't publicly charge somebody with serious criminal activity  
14 without there being a genuine basis to support such an allegation.  
15 Do you understand that?

16          THE DEFENDANT: Yes.

17          THE COURT: A person can give up her right to that grand  
18 jury review process, and that would be done by signing a waiver of  
19 indictment such as the one that you've signed. The word "waiver"  
20 in the law means to give something up, so by waiving indictment,  
21 you're giving up that grand jury review process, and instead,  
22 you're authorizing the prosecutors to come to court today and file  
23 this conspiracy charge against you using a document called a  
24 criminal information, and that information will not have been  
25 tested by a grand jury.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, other than the plea agreement that you  
4 have with the government, has anybody promised or suggested to you  
5 that you might receive lighter -- a shorter sentence or more  
6 favorable treatment by the Court if you would waive indictment?

7 THE DEFENDANT: No.

8 THE COURT: Has anyone put any force or pressure on you  
9 to waive indictment today?

10 THE DEFENDANT: No.

11 THE COURT: Mr. Yamamoto, did you and your cocounsel  
12 carefully go over this waiver with Ms. Kelly?

13 MR. YAMAMOTO: Yes, Your Honor.

14 THE COURT: Are you satisfied that Ms. Kelly is entering  
15 her waiver in a knowing and voluntary fashion?

16 MR. YAMAMOTO: Yes, Your Honor.

17 THE COURT: All right, based on these answers to the  
18 Court's questions, Ms. Kelly, I find that you've entered your  
19 waiver with the advice of counsel and that you've done so in a  
20 knowing and voluntary fashion, so the waiver is accepted by the  
21 Court, and that allows the United States to file the following  
22 charge against you by way of a criminal information. I'm going to  
23 just -- have you had a copy of this information before today?

24 THE DEFENDANT: Yes.

25 THE COURT: And have you gone over it carefully with

1 your counsel?

2 THE DEFENDANT: Yes.

3 THE COURT: And I'm not going to read the whole thing to  
4 you, but the essence of it is as follows: You're charged with  
5 beginning on or about the year 2002 and continuing through in or  
6 about August of 2009, in this district and elsewhere, conspiring  
7 with at least one other person to commit the crimes of bank fraud,  
8 wire fraud, and securities fraud.

9 And the criminal information then explains the ways and  
10 means of the way in which the conspiracy was committed, and then  
11 it lists one overt act, and that is that on or about January 6,  
12 2009, you and other coconspirators caused Colonial Bank to wire  
13 approximately \$66,400,000 to LaSalle Bank in connection with the  
14 purported purchase of three trades from TBW which were to be held  
15 on Colonial Bank's books as securities purchased under agreements  
16 to resell. That's the overt act they've specified.

17 Now, to this criminal information, how do you want to  
18 plead, guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: All right. Now, Ms. Kelly, before the Court  
21 accepts your guilty plea, I'm going to go over with you in detail  
22 the plea agreement that you have with the United States and the  
23 statement of facts which is incorporated in that plea agreement.  
24 If at any point this morning you should change your mind and  
25 decide you do not want to plead guilty, you have a right to

1 withdraw your plea.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Now, there has been filed this morning a  
5 plea agreement which is 15 pages long, and I see what appears to  
6 be your signature at the very bottom of page 14. Did you, in  
7 fact, sign the plea agreement?

8 THE DEFENDANT: Yes.

9 THE COURT: And did you sign it today?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, before you signed the plea agreement,  
12 did you read it over for yourself word for word?

13 THE DEFENDANT: Yes.

14 THE COURT: And approximately when did you first get a  
15 copy or a draft of this plea agreement?

16 THE DEFENDANT: More than a month ago.

17 THE COURT: All right. And when you first saw the plea  
18 agreement -- since then, have changes been made to it, either to  
19 it or the statement of facts?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. So the current version that you  
22 signed which is in court today, you have read this particular  
23 version for yourself word for word?

24 THE DEFENDANT: Yes.

25 THE COURT: And have you had enough time to thoroughly



1 ask your counsel all the questions that you have about the plea  
2 agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: Have your attorneys answered your questions  
5 to your satisfaction?

6 THE DEFENDANT: Yes.

7 THE COURT: As you stand in court this morning, do you  
8 have any questions you want to ask me about the plea agreement?

9 THE DEFENDANT: No.

10 THE COURT: All right. In the course again of this plea  
11 hearing, if you should have a question, you know you have a right  
12 to ask it.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. I want you to turn to page 14,  
15 and look above your signature. There are two sentences that go  
16 over some of what we've just done, but I want you to recognize  
17 that they're in the plea agreement itself, and they go, "I have  
18 read this plea agreement and carefully reviewed every part of it  
19 with my attorney. I understand this agreement and voluntarily  
20 agree to it."

21 Do you see those two sentences?

22 THE DEFENDANT: Yes.

23 THE COURT: Are they completely true?

24 THE DEFENDANT: Yes.

25 THE COURT: Ms. Kelly, by telling the Court that you've

1 read the entire plea agreement and discussed it thoroughly with  
2 counsel and that you understand the agreement and are voluntarily  
3 agreeing to it, that means you will be bound by everything written  
4 in these 15 pages even if I don't go over every paragraph or page  
5 of the plea agreement in court with you today. Do you understand  
6 that?

7 THE DEFENDANT: Yes.

8 THE COURT: And the reason for that result is that the  
9 plea agreement is really a written contract between you and the  
10 United States government, and you're somebody with some business  
11 background, so you know how contracts work, right?

12 THE DEFENDANT: Um-hum.

13 THE COURT: All right. And you know therefore that when  
14 a person has signed a written contract after carefully reviewing  
15 it with counsel and she understands it when she signs it and she  
16 signs it voluntarily, then that document becomes a binding legal  
17 instrument, and you can't just walk into the court in a couple of  
18 weeks and say, "You know, I really don't like what's on page 6. I  
19 want to change it."

20 You just can't do that. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, other than the plea agreement that's in  
23 court this morning, do you have any side deals or side  
24 understandings with any federal or state investigators, bank  
25 examiners, SEC investigators, or any other types of law

1 enforcement officials or government attorneys concerning this  
2 case?

3 THE DEFENDANT: No.

4 THE COURT: All right. It's perfectly fine for you to  
5 consult with counsel, but I want to just make sure that you  
6 yourself are sure about that.

7 THE DEFENDANT: Yes.

8 THE COURT: No side deals?

9 THE DEFENDANT: No side deals.

10 THE COURT: And, counsel, I'll hear from both of you:  
11 Is it your understanding there are no other deals or agreements on  
12 behalf of your client?

13 MR. YAMAMOTO: Yes, Your Honor.

14 MR. LEVENTHAL: Yes, Your Honor.

15 THE COURT: Yes?

16 MR. ZINK: Yes, Your Honor.

17 THE COURT: All right. Then let's turn to page 1,  
18 paragraph 1 of the plea agreement. There it says you've agreed to  
19 waive indictment, which you have just done, and to plead guilty to  
20 the criminal information I just summarized for you.

21 Now, the conspiracy that you're charged with is brought  
22 under Title 18 of the United States Code, section 371. That is a  
23 felony. It exposes you to a possible maximum penalty of five  
24 years' imprisonment followed by three years of -- up to three  
25 years of supervised release. You could be exposed to a fine of

1 either up to \$250,000 or as an alternative fine not more than  
2 greater than twice the gross gain or twice the gross loss from the  
3 activity.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: You could also be required to make full  
7 restitution. The restitution in this case has not yet been  
8 determined, but it could be a very significant number. Do you  
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: The supervised release portion of the  
12 sentence does not begin until any period of imprisonment has been  
13 served. When a person is on supervised release, she is under the  
14 control of a federal probation officer, and there may be  
15 requirements to do certain things.

16 For example, in a financial crime, there's frequently a  
17 requirement to make a certain minimum monthly payment towards the  
18 restitution obligation. That normally also involves the Court  
19 imposing restrictions on a person's financial activity, requiring  
20 full access by the Probation Office to any and all financial  
21 records.

22 Those are just examples of some of the conditions that  
23 are sometimes imposed, and I can't tell you the specific  
24 conditions yet because I haven't seen the presentence report, but  
25 what you need to understand clearly is that if you were to violate

1 any condition of supervised release, you could be punished by  
2 being sent back to prison, and that could be for as long as the  
3 period of supervised release, which is three years.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Parole is not available in the federal  
7 system, which means any term of imprisonment must be served  
8 entirely. The Bureau of Prisons in some cases does have a way of  
9 giving good time credit, but it's very minimal, and as a practical  
10 matter, a defendant should be prepared to serve the entire  
11 sentence that's imposed. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Now, when it comes time for  
14 sentencing, the Court is going to be looking at many different  
15 factors. One factor will be the federal sentencing guidelines,  
16 and these are addressed in paragraph 6 of your plea agreement, but  
17 I first of all want to make sure you're clear as to how the  
18 guidelines operate.

19 The Court needs to make two factual decisions before the  
20 guidelines can be determined. We first have to determine a  
21 defendant's criminal history. Criminal histories are divided into  
22 six categories, each getting a number. A No. 1 history would go  
23 to somebody who's never been in trouble with the law or who has a  
24 very minor record, and then as convictions, probation, or  
25 supervised release violations and other problems occur in the

1 record, the score goes up, with a level VI being -- going to the  
2 most serious offenders.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Then the Court must look at the offense  
6 conduct. Now, every federal crime has a basic number given to it  
7 by the Sentencing Commission, and then depending upon the facts of  
8 the case, that number can go up or down.

9 In paragraph 6 of the plea agreement, you and your  
10 counsel and the government have agreed to certain facts that would  
11 affect the guidelines. I want you to understand that although  
12 you-all are bound by what's in paragraph 6, neither the probation  
13 officer who prepares the presentence report or this Court is in  
14 any respect bound by what's in paragraph 6. Do you understand  
15 that?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. However, in paragraph 6, you've  
18 all agreed that the base offense level for the conduct in Count 1  
19 would be a level 6, and then because more than 250 victims were  
20 involved, that would -- and the conduct jeopardized the safety and  
21 soundness of a financial institution, that could result in an  
22 eight-level upward adjustment.

23 In paragraph 6.c, you've also agreed that sophisticated  
24 means were used, and that would result in a two-level adjustment,  
25 and that you would have been considered to be a supervisor of that

1 criminal activity, and if the Court made that finding, that would  
2 be an additional two-level increase.

3 Paragraph 6.e provides that you've been of assistance to  
4 the government at this point, and if you continue to accept full  
5 responsibility, not only can you get a two-point level decrease to  
6 the offense level, but, in fact, the government would move for you  
7 to get a third level. There may very well be other factors that  
8 affect the score either up or down, and the Court may or may not  
9 accept any or all of what's in paragraph 6.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: But in the end, the Court will determine an  
13 offense number, and then those two numbers, the criminal history  
14 number and the offense number, will be put on the Sentencing  
15 Guideline Table, and that establishes an advisory guideline range.  
16 Now, the Court needs to consider that range but has the authority  
17 to sentence above it or below it. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: The Court must also in determining the  
20 appropriate sentence look at all of the factors in section 3553(a)  
21 of Title 18, which means we're going to look in depth at your  
22 personal background, your family situation, your employment  
23 history, any medical issues that might apply to you, and we're  
24 going to look, of course, at the need for deterrence, that is, do  
25 you -- is there an indication from your record that you might do

1 the same type of activity in the future such that we have to  
2 fashion the sentence to try to prevent that.

3 And an important element of the sentencing in this kind  
4 of a case, which is basically a white collar fraud case, is to  
5 make sure that a clear message is also sent out to the general  
6 community that engaging in this kind of conduct results in  
7 potential punishment as a way of deterring such conduct by others.

8 All those factors go into the mix in determining the  
9 appropriate sentence, but in the end, the Court will determine the  
10 sentence. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Now, I'm assuming that your counsel have  
13 discussed sentencing potentials with you a great deal. Most  
14 lawyers do that, and that's really what most defendants are  
15 interested in. Is that a correct assumption?

16 THE DEFENDANT: Yes.

17 THE COURT: And have they shown you a copy of the  
18 guideline table with all the numbers on it?

19 THE DEFENDANT: Yeah, we discussed the guidelines.

20 THE COURT: All right. What normally happens is an  
21 attorney says, well, if the Court makes this finding, then here's  
22 what the numbers are going to look like; if she makes that  
23 finding, it's going to look this way, that kind of discussion.

24 THE DEFENDANT: Yes.

25 THE COURT: All right. What I want to make sure you



1 absolutely understand is no matter what your lawyers may have told  
2 you they think your guideline scores will come out to be or if the  
3 prosecutors or the investigators have given you their, their  
4 thoughts about that or, for that matter, if anybody has talked to  
5 you about the ultimate sentence they think you may be getting,  
6 none of those discussions in any respect limit or bind the  
7 Probation Office or this Court.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: And so if at the sentencing hearing you  
11 receive a sentence that is different from what you are expecting  
12 or hoping for, that is not a violation of the plea agreement, and  
13 it will not give you a basis to withdraw your guilty plea. Do you  
14 understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, normally a defendant in a criminal case  
17 has the right to appeal the sentence imposed on her, but if you  
18 look at paragraph 5 of your plea agreement, this is on page 3, the  
19 second sentence, which begins with the word "nonetheless," as part  
20 of this plea agreement, you are knowingly waiving -- again that  
21 same word, which means giving up -- your right to appeal the  
22 conviction, and you're also giving up your right to appeal any  
23 sentence as long as the sentence does not exceed the statutory  
24 maximum.

25 That means as long as the Court does not sentence you to

1 more than five years in prison followed by three years of  
2 supervised release and the fine does not exceed one of those two  
3 factors that I mentioned to you earlier and the special assessment  
4 is not greater than \$100, you cannot appeal the sentence.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, in exchange for your guilty plea today,  
8 the government has agreed that it will provide you with what is  
9 called limited immunity from further prosecution. This is in  
10 paragraph 10. And I want you to understand that I don't agree and  
11 I don't think as a matter of law that everything that's in  
12 paragraph 10 is enforceable.

13 I don't find that the Fraud Section of the Criminal  
14 Division can bind -- I find that if a section of a division of the  
15 Department of Justice makes a commitment, it's going to bind the  
16 whole Criminal Division. I may be wrong on that, but that's my  
17 view of what the law would, would ultimately come out if that were  
18 ever contested.

19 U.S. attorneys, however, cannot bind other U.S.  
20 attorneys, and so in this case, I believe only the United States  
21 Attorney's Office for the Eastern District of Virginia has  
22 committed to this plea agreement, no other U.S. attorney. Is that  
23 correct? I want to make sure, because there have been some other  
24 plea agreements where other U.S. Attorney's Offices have been  
25 involved.

1 MR. ZINK: That's correct, Your Honor.

2 THE COURT: All right. That means that the authorities  
3 in Alabama or Georgia or Florida could still prosecute you for  
4 activities related to this case. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. In addition, it's quite clear  
7 that none of the civil enforcement agencies are bound by this plea  
8 agreement, and that means the Civil Division of the Department of  
9 Justice could still come after you, the SEC can still bring  
10 proceedings, so you still have a lot of civil exposure. Do you  
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. You have also agreed as part of  
14 this plea agreement to the entry of an order of prohibition. This  
15 is in paragraph 17, and that's one of the serious side effects of  
16 this conviction, that you have agreed to this prohibition order  
17 from both the Federal -- under both the Federal Deposit Insurance  
18 Act and also from the Office of Thrift Supervision, and the result  
19 of those orders is that you're going to be significantly limited  
20 in being able to ever work again in the financial industry.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: And you've discussed that thoroughly with  
24 your counsel?

25 THE DEFENDANT: Yes.

1           THE COURT: All right. You have agreed in paragraph 11  
2 of the plea agreement to cooperate in this matter with the  
3 government, and that cooperation is described in subparagraphs a  
4 through f but includes among other things your testifying  
5 completely and truthfully as a witness in any trials, grand  
6 juries, or other proceedings; your being available for debriefings  
7 and pretrial conferences; and your providing documents, records,  
8 and other evidence to the government at its request.

9           Do you understand that?

10          THE DEFENDANT: Yes.

11          THE COURT: The government has agreed in paragraph 12  
12 that it will not use against you either to increase your sentence  
13 or to bring a new prosecution any completely truthful information  
14 you provided under paragraph 11. Do you understand that?

15          THE DEFENDANT: Yes.

16          THE COURT: Now, most defendants who cooperate with the  
17 government do so with the hope that the cooperation will result in  
18 some benefit in terms of a sentence, and that issue is discussed  
19 in paragraph 15 of your plea agreement. There are two ways in  
20 which cooperation can be recognized. The first would be if the  
21 government either before or at the time of the sentencing hearing  
22 files a motion under 5K1.1 of the guidelines. That kind of a  
23 motion asks the Court to sentence a defendant below the guideline  
24 range because of that defendant's substantial cooperation with the  
25 government.

1           The other type of motion that can be filed is a Rule  
2 35(b) motion, and that motion is filed after a person has been  
3 sentenced, so usually the person is now in custody serving the  
4 sentence, and the government will ask the Court to reduce the  
5 sentence because of the person's cooperation.

6           What paragraph 15 makes clear is that the government has  
7 not promised or guaranteed you that it will file either or both of  
8 those motions and that, in fact, even if you've talked with the  
9 agents, even if you testified at trial, if for some reason they  
10 determine that they're not going to make the motion, that is not a  
11 violation of the plea agreement, and it would not give you a basis  
12 to withdraw your guilty plea.

13           Do you understand that?

14           THE DEFENDANT: Yes.

15           THE COURT: Moreover, even if the government were to  
16 file one of those motions, the Court is not bound to grant that  
17 motion under the plea agreement, and that means, for example,  
18 let's say the government filed a Rule 35(b) motion and they asked  
19 the Court to reduce your sentence by three-quarters, by 75  
20 percent, and I found that only a 10 percent reduction was  
21 appropriate. That decision would not violate the plea agreement,  
22 and it would not give you a basis to withdraw your guilty plea.

23           Do you understand that?

24           THE DEFENDANT: Yes.

25           THE COURT: Now, have you had enough time -- oh, I

1 should mention to you there is also forfeiture provisions in this  
2 plea agreement, and those are listed in paragraphs 18, 19, and 20.  
3 Persons who obtain assets, either money or material property,  
4 through illegal activity often have to forfeit that money and  
5 those assets to the government, and what you've agreed to in  
6 paragraphs 18, 19, and 20 is basically to assist the government in  
7 identifying any such assets and then agreeing to their forfeiture.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Now, have you had enough time to  
11 thoroughly discuss everything you know about this conspiracy with  
12 your counsel?

13 THE DEFENDANT: Yes.

14 THE COURT: And have they discussed with you the nature  
15 of the conspiracy charge and any ways in which you could possibly  
16 defend yourself against the charge if you chose to go to trial?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you fully satisfied with the way your  
19 lawyers have worked for you in this case?

20 THE DEFENDANT: Yes.

21 THE COURT: And do you understand you still at this  
22 moment have a right to plead not guilty and to go to trial on the  
23 charge?

24 THE DEFENDANT: Yes.

25 THE COURT: If you did go to trial, then the burden

1 would be on the government to prove you guilty, and that burden is  
2 a burden of proof beyond a reasonable doubt. To meet that burden,  
3 the government must prove each and every one of the essential  
4 elements of the offense beyond a reasonable doubt.

5           So specifically, they have to prove that there was, in  
6 fact, a conspiracy beginning on or about the year 2002 and  
7 continuing through August of 2009. A conspiracy is basically an  
8 agreement between two or more people to do something the law  
9 forbids.

10           They have to then be able to prove that the object of  
11 the conspiracy was wire fraud, bank fraud, and/or securities  
12 fraud. They don't actually have to prove all three, but at least  
13 one of those objects they'd have to prove, because that's the  
14 conspiracy they've alleged here.

15           Then they have to prove that during the life of the  
16 conspiracy, you knowingly and intentionally, and that means not by  
17 an accident or mistake or some other innocent reason, became  
18 involved in the activities of the conspiracy.

19           Do you understand that?

20           THE DEFENDANT: Yes.

21           THE COURT: They must also prove that at least one  
22 member of the conspiracy, it doesn't even have to be you, but at  
23 least one member has to commit one of the overt acts named in the  
24 information. In this case, as I mentioned to you earlier, it's  
25 alleged that you were involved on January 6, 2009, with this wire

1 transfer of 66 million and change, but they'd have to prove that  
2 beyond a reasonable doubt.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: And lastly, they have to prove that there  
6 was some connection between the activities of the conspiracy and  
7 this district. Do you -- to establish venue. Do you understand  
8 that?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, if you pled not guilty and chose to go  
11 to trial, there are certain rights and protections you would have  
12 at trial that you essentially give up by pleading guilty. First  
13 of all, at trial you could see all of the government's witnesses  
14 and evidence and have it tested through the cross-examination and  
15 questions of your lawyers. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: You could ask the Court to issue subpoenas  
18 that would require the presence of either witnesses or physical  
19 evidence at the courthouse for you to use in your defense. Do you  
20 understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: You could testify as a witness at trial. Do  
23 you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: You could also invoke your Fifth Amendment



1 right to remain silent, and if you chose not to say anything at  
2 trial, that silence could not be used as any evidence of guilt.  
3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: You would have the right, of course, to  
6 counsel throughout your trial, and if you could not afford to pay  
7 for trial counsel, we would make sure you had a lawyer at  
8 taxpayers' expense. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Your case could be tried either by a judge  
11 sitting alone, which is called a bench trial, or you could have a  
12 trial by jury, in which case again a group of 12 citizens would  
13 randomly be brought to court. Twelve of them would be selected to  
14 hear the case.

15 Now, it doesn't make any difference whether your case  
16 was tried to a judge or to a jury. In order for you to be found  
17 guilty, the government would have to prove your guilt beyond a  
18 reasonable doubt. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: If you continued with a not guilty plea,  
21 your counsel could try to attack the prosecution's case, and there  
22 are different ways in which that can be done. If, for example,  
23 you gave a statement or confession to the agents, they could probe  
24 whether or not that could be suppressed because of any violations  
25 of your Miranda rights or other defects in the way the confession

1 was taken. If there were searches conducted of your bank records  
2 or your home or your person, there may or may not be defects in  
3 the way that was done. There may or may not be other types of  
4 issues they could raise.

5 What you need to understand is that by pleading guilty,  
6 you're giving up those types of attacks or defenses to the  
7 prosecution's case. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: And lastly, if you pled not guilty and went  
10 to trial and you were found guilty at trial, you could appeal that  
11 finding of guilt to a higher-level court. Now again, under the  
12 terms of your plea agreement as well as the case law, do you  
13 understand that by pleading guilty, you're giving up your right to  
14 appeal that finding of guilt?

15 THE DEFENDANT: Yes.

16 THE COURT: Other than the written plea agreement that's  
17 in court today, has anybody promised or suggested to you that by  
18 pleading guilty, you would get a lighter sentence or more  
19 favorable treatment by the Court?

20 THE DEFENDANT: No.

21 THE COURT: Has anyone put any force or pressure on you  
22 to plead guilty today?

23 THE DEFENDANT: No.

24 THE COURT: All right, Ms. Kelly, the last document we  
25 need to go over is the ten-page written statement of facts. I see

1 what appears to be your signature at the top of page 10. Now, did  
2 you, in fact, sign the statement of facts?

3 THE DEFENDANT: Yes.

4 THE COURT: And before signing the statement, did you  
5 read it over carefully?

6 THE DEFENDANT: Yes.

7 THE COURT: And go over it thoroughly with counsel?

8 THE DEFENDANT: Um-hum.

9 THE COURT: Do you understand that by signing the  
10 statement of facts, you are admitting to the truth of the 19  
11 numbered paragraphs above your signature, and you are admitting  
12 that if the case had gone to trial, the government could have  
13 proven all of those facts beyond a reasonable doubt? Do you  
14 understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Is there anything whatsoever in this  
17 statement of facts that you want to change or correct for the  
18 record? And it's not held against you. If there's something in  
19 here that you think is not quite accurate, you need to tell me  
20 now.

21 THE DEFENDANT: No.

22 THE COURT: All right. I'm not again going to go over  
23 all of these details with you, but the main thing I want to make  
24 sure you understand is that this statement of facts is among other  
25 things what's going to be used by the Probation Office in the

1 presentence report, so if you come at the sentencing hearing and  
2 say, "Well, that statement in paragraph 15 isn't accurate," or "I  
3 don't agree with that," that's a problem. So again, is there  
4 anything you want to correct in this statement of facts?

5 THE DEFENDANT: No.

6 THE COURT: All right.

7 MR. YAMAMOTO: Your Honor, just for the record, there  
8 are facts in there that she may not be aware of that the  
9 government's aware of that she didn't take part in, so --

10 THE COURT: But by signing the statement of facts,  
11 you're not contesting, in other words, part of that is you're  
12 admitting that those representations by the government could be  
13 proven beyond a reasonable doubt, and you're not going to step  
14 away from that.

15 MR. YAMAMOTO: Correct, Your Honor.

16 THE COURT: Ms. Kelly, is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. The main -- the essence of this  
19 is were you aware of while you were working at Colonial Bank, of  
20 some of the financial problems involved with these transactions?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. And how were you made aware of  
23 that?

24 THE DEFENDANT: I was involved.

25 THE COURT: You were involved, all right.

1           Now, do you understand that if the Court accepts your  
2 guilty plea today, there will be no further trial of this issue,  
3 and you will be found guilty of this conspiracy?

4           THE DEFENDANT: Yes.

5           THE COURT: Do you claim in any respect you are innocent  
6 of the conspiracy charge?

7           THE DEFENDANT: No.

8           THE COURT: How then do you plead?

9           THE DEFENDANT: Guilty.

10          THE COURT: All right. Counsel, have you both had  
11 enough time to go over this plea with Ms. Kelly?

12          MR. YAMAMOTO: Yes, Your Honor.

13          MR. LEVENTHAL: Yes.

14          THE COURT: Are you each satisfied that Ms. Kelly is  
15 entering her plea in a knowing and voluntary fashion?

16          MR. LEVENTHAL: Yes, Your Honor.

17          MR. YAMAMOTO: Yes, Your Honor.

18          THE COURT: And, counsel, from your review of the  
19 evidence -- and I assume you've had fair access to discovery in  
20 this case? Is that the case?

21          MR. LEVENTHAL: We've had enough access to the events at  
22 Colonial Bank that we understand what the government could prove,  
23 and that's been fully discussed with Ms. Kelly.

24          THE COURT: All right. So you're satisfied that the  
25 evidence in this record is more than enough upon which to find the

1 defendant guilty?

2 MR. LEVENTHAL: I am, Your Honor.

3 THE COURT: All right. Ms. Kelly, based on these  
4 answers to the Court's questions, the Court finds that you've  
5 entered your guilty plea in a knowing and voluntary fashion, with  
6 the full advice of counsel, and that the written statement of  
7 facts and your oral admissions in court today are more than enough  
8 evidence upon which to find you guilty beyond a reasonable doubt.

9 We need to set this case -- so the plea is accepted, and  
10 you're found guilty.

11 We need to set this case for sentencing, and I believe  
12 we need to set a bond in this case. So let's get a sentencing  
13 date first. We can do this June 17. Does that work for your  
14 calendars?

15 MR. ZINK: It works for the government, Your Honor.

16 MR. LEVENTHAL: Your Honor, my calendar is in my phone.  
17 My phone, of course, is not in the courthouse, but with the  
18 Court's approval, if I could respond to Mr. Yamamoto by the end of  
19 the day if there's a problem?

20 THE COURT: All right. Well, I'm going to put it down  
21 for 9:00 on June 17 at this point.

22 MR. LEVENTHAL: What day of the week is that?

23 THE COURT: It's a Friday. We always sentence on  
24 Fridays.

25 MR. LEVENTHAL: Thank you.

1           THE COURT: Ms. Kelly, you live in Florida. Is it the  
2 Middle District of Florida where you are?

3           THE DEFENDANT: Yes, in Orlando.

4           THE COURT: In Orlando?

5           THE DEFENDANT: Um-hum.

6           THE COURT: Do you have a passport with you today?

7           THE DEFENDANT: Yes.

8           MR. YAMAMOTO: I have it, Your Honor.

9           THE COURT: All right. Mr. Yamamoto, if you'd give it  
10 to Mr. Wood, please?

11           MR. YAMAMOTO: Your Honor, I'd ask that I be permitted  
12 to hold the passport. It's just easier for everybody that way.  
13 It doesn't get turned in to the State Department.

14           THE COURT: Well, I think I've directed the Pretrial  
15 Office in my cases not to be turning it in anyplace, because there  
16 have been problems with defendants not getting their passports  
17 back.

18           MR. YAMAMOTO: Correct. They don't get their passports  
19 back.

20           THE COURT: And we're not seizing passports as a part of  
21 the sentence in this case. So is it your experience that Pretrial  
22 is still taking them -- I mean, sending them to the State  
23 Department?

24           MR. YAMAMOTO: Yes. They send all of them to the State  
25 Department unless the Court orders that they hold them. So I

1 would hold it up here. She doesn't have access to it down there  
2 then.

3 THE COURT: All right. Well, because you're well known  
4 to the Court, Mr. Yamamoto, I have no problem with that, but I'll  
5 need to put that on the bond papers, so hold on a second.

6 MR. YAMAMOTO: That's fine, Your Honor.

7 THE COURT: Do you have any need, Ms. Kelly -- other  
8 than coming up here for court proceedings, do you have any need to  
9 be outside of the Orlando metropolitan area?

10 THE DEFENDANT: My family lives around the Tampa area,  
11 so that may be the only need, to go over there.

12 THE COURT: Is Tampa still within the Middle District?

13 MR. LEVENTHAL: That's within the Middle District of  
14 Florida, Your Honor.

15 THE COURT: Are you currently working?

16 THE DEFENDANT: No.

17 MR. YAMAMOTO: She resigned last week, Your Honor.

18 THE COURT: All right. Are you seeking employment?

19 THE DEFENDANT: I will -- I just resigned last week, so  
20 I haven't had time to start looking yet.

21 THE COURT: All right. All right, Ms. Kelly, I'm going  
22 to release you on a \$50,000 personal recognizance bond. That's  
23 what we've been doing in these other cases.

24 MR. ZINK: That's fair, Your Honor, yes.

25 THE COURT: All right. With the following terms and



1 conditions: First of all, you must be of uniform good behavior.  
2 That means you cannot violate any federal, state, or local laws  
3 while on bond. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: That includes traffic laws. Do you  
6 understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Secondly, you have to comply with all the  
9 conditions that will be spelled out in the order setting  
10 conditions of release, and they'll also be explained to you by the  
11 Pretrial Services Office. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: As special conditions, you must reappear in  
14 this court on Friday, June 17, at 9 a.m. for sentencing. Do you  
15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: You will have to post an unsecured bond in  
18 the amount of \$50,000. That means if for any reason you violate  
19 the bond, the government would have a judgment against you in that  
20 amount. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: You are to actively seek employment. Do you  
23 understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. You must continue to reside at

1 your current address, and you are not allowed to depart the Middle  
2 District of Florida without prior approval either of Pretrial  
3 Services or the Court. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Even for coming back for your sentencing  
6 hearing, you need to let Pretrial know when you're leaving  
7 Florida, where you'll be staying up here, that sort of thing. Do  
8 you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: And if you're coming up here to attend the  
11 trial, to be debriefed, again, all those things need to be worked  
12 out with Pretrial in advance. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. You are not to have any contact  
15 with any of the other participants in this case unless in the  
16 presence of counsel. You are not prohibited from speaking with  
17 counsel or anybody else who's involved in this case. I recommend  
18 you discuss that issue with your attorneys. You have a right not  
19 to talk to them, but you have a right to talk to them. However, I  
20 don't want you having contact with any of those people unless you  
21 have an attorney present.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And if they should contact you, I mean, if  
25 you should be getting an e-mail or phone call or any kind of

1 contact by one of the codefendants, you need to let your counsel  
2 know that right away. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Rather than responding back to them  
5 directly.

6 THE DEFENDANT: Um-hum.

7 THE COURT: You must report on a regular basis to both  
8 Pretrial Services and the U.S. Probation Office. Do you  
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And they'll advise you when they need to see  
12 you.

13 You cannot possess a firearm, destructive device, or  
14 other dangerous weapon, because you are now a convicted felon. Do  
15 you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Are there any firearms in your residence?

18 THE DEFENDANT: Not that I'm aware of. My husband may  
19 have one, but I'll check with him.

20 THE COURT: Well, he needs to have it under lock and key  
21 such that you couldn't get access to it. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: You may not use alcohol to excess or use or  
24 possess any illegal drugs. Do you understand that?

25 THE DEFENDANT: Yes.

1           THE COURT:  You've surrendered your passport to  
2 Mr. Yamamoto.  Do you understand you may not obtain a passport or  
3 other travel documents while on bond?

4           THE DEFENDANT:  Yes.

5           THE COURT:  And you have to advise any employer of this  
6 conviction.  Do you understand that?

7           THE DEFENDANT:  Yes.

8           THE COURT:  Are there any other conditions of release  
9 the government is requesting in this case?

10          MR. ZINK:  No, Your Honor.

11          THE COURT:  All right.

12          MR. LEVENTHAL:  Your Honor?

13          THE COURT:  Yes.

14          MR. LEVENTHAL:  There is -- there's already pre-planned  
15 travel back to this district next week for Mrs. Kelly, next  
16 Wednesday for several days.  I don't know how quick she can get  
17 approval from Pretrial Services.

18          THE COURT:  Is Pretrial in here this morning?

19          THE PRETRIAL SERVICES OFFICER:  Yes, Your Honor.

20          THE COURT:  All right.  I don't want to have to write  
21 all this stuff in.  Definitely for -- what I recommend is that as  
22 long as you're notified, as long as you know what days Ms. Kelly  
23 is going to be up here, because I expect since there's a trial  
24 date looming, she's going to be up here a great deal preparing for  
25 trial, I don't want her to have to get tied down running back and

1 forth. So she has blanket permission from this Court to be up  
2 here when needed for debriefings and for the trial, all right?

3 THE PRETRIAL SERVICES OFFICER: All right.

4 THE COURT: You have that orally. That's -- all right?

5 THE PRETRIAL SERVICES OFFICER: Yes.

6 THE COURT: So work that out with Pretrial. There  
7 shouldn't be any trouble with that, all right?

8 MR. YAMAMOTO: Yes, Your Honor.

9 MR. LEVENTHAL: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MR. LEVENTHAL: No, Your Honor.

12 MR. YAMAMOTO: No.

13 THE COURT: No? All right.

14 Now, when you leave court today, I'm going to have --  
15 you'll get the bond papers here in a second. You need to make  
16 sure -- Mr. Yamamoto, you know the drill.

17 MR. YAMAMOTO: Yes, Your Honor.

18 THE COURT: Your client needs to go to the Marshals  
19 Service for processing, she needs to check in with Pretrial  
20 Services, she needs to sign the bond papers down at the Clerk's  
21 Office, and then Probation. So there are four stops, all right?

22 MR. YAMAMOTO: Yes, Your Honor.

23 THE COURT: All right, you're all free to go at this  
24 time. Thank you.

25 MR. YAMAMOTO: Thank you, Your Honor.

1 MR. LEVENTHAL: Thank you, Your Honor.

2 (Which were all the proceedings  
3 had at this time.)  
4

5 CERTIFICATE OF THE REPORTER

6 I certify that the foregoing is a correct transcript of the  
7 record of proceedings in the above-entitled matter.  
8  
9

10 /s/

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Anneliese J. Thomson  
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